AFR

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
MISCELLANEOUS APPEAL NO. 710 of 2005

Appellant :
Plaintiff

Manoj Kumar Agrawal
S/o Babulal Agrawal
aged about 43 years
Agrawal Printers
Behind Police Thana, Aapapura
Dist-Durg (CG)

Vs

Respondents:

1)Smt Dulari Bai
D/o Lalluram Valmik
Aged about 51 years
R/o Ramanagar
Gwalipura, Sweeper Colony
Kamthi, Nagpur (Maharashtra)

2)State of Chhattisgarh-
Through the Collector, Dhamtari
Tahsil & Dist-Dhamtari

3)Sanjay Agrawal
S/o Syamsunder Agrawal
Aged about 40 years
R/o Gujrati Colony
Dhamtari
Tahsil & Dist - Dhamtari

PRESENT:

Ms Sunita Jain, counsel for the appellant.
Mr. Vishnu Koshta, counsel for respondents No.1 & 3.
Mr. Akhil Agrwal, Panel lawyer for respondent No.2/State.

ORDER
(Dated 6th April 2006)

This appeal is directed against the order dated 21.04.2005 passed by Additional District Judge Dhamtari, in Civil Suit No.9A/2005 whereby the application filed by appellant under Order

XXXIX Rule 1 & 2 read with Section 151 of the CPC for grant of temporary injunction, has been rejected.

2) Appellant filed a suit for specific performance of contract and possession *inter-alia* on the ground that respondent No.1 entered into an agreement to sell the suit land bearing Khasra No.1675/5 area 0.15 acre with the appellant on 13.10.2004, who after receiving Rs.11,000/- towards earnest money executed the agreement deed; thereafter, appellant repeatedly requested respondent No.1 to execute the sale but she avoided it and even when registered notice was sent to her, she refused to accept it. During the pendency of the suit, respondent No.1 sold the suit land by a registered sale deed to respondent No.3 on 29.01.2005. Hence, he was also made a party in the suit. An application under Order XXXIX Rule 1 & 2 read with Section 151 was filed by the appellant for grant of temporary injunction against respondent No.3. Respondent No.3 denied the claim and stated that no agreement to sell the suit land has been executed by respondent No.1 in favour of the appellant. He further stated that he is the absolute owner of the suit land , therefore, no injunction against him can be passed.

3) Learned Court below, from the material on record, held no prima facie case, principle of balance of convenience and irreparable loss in favour of the appellant. Therefore, vide impugned order, dismissed the application.

4) Learned counsel for the appellant relying on the judgments rendered in ***Ashok Kumar Sable Vs Sevak Prasad Singh*** reported in ***MP Weekly Notes 1997 (1) Short Note 123*** and ***Maharwal Khewaji Trust (Regd) Faridkot Vs Baldev Dass*** reported in ***2004 (8) SCC 488,*** contended that to avoid multiplicity of litigation and also to protect the interest of appellant who in absence of status quo may suffer substantial loss whereas if status quo is allowed till disposal of the litigation no harm will be caused to respondent No.3, appellant was entitled for relief but, the learned Court below without due consideration, erroneously disallowed the application vide impugned order.

5) Admittedly, respondent No.1 was the owner of the suit land, who sold it to respondent No.3 by a registered sale deed on 29.01.2005 and also delivered possession to him, who is in possession of the same. One of the conditions embodied in the agreement to sale reads that "यदि केता चाहेगा तो उसके या अन्य नाम से जो वह कहेगा उस नाम से रजिस्ट्री करने को बाध्य रहूंगी । जमीन की नपाई व अन्य कागज जो रजिस्ट्री के लिये अनिवार्य होगें वह विकेता को उपलब्ध करवाउगी " . It indicates that on the wishes or choice of appellant the sale deed is to be executed even in the name of third person, whether such an agreement can be treated as agreement to sale is a question debatable. Set apart, respondent No.1 & 3 have raised that there is a dispute of loan transaction; therefore, whether the agreement was executed towards security of the loan is also a dispute present in the suit. Prima facie, the

ownership of a land was not transferred in favour of appellant, whereas by a registered sale deed and delivery of possession, the real owner of the suit land has transferred it to respondent No.3 who is the owner and in possession of the suit land. From the recital of the agreement, prima facie, it appears that appellant is not a genuine purchaser but appears to be a property dealer who, to facilitate the business of purchase and sale of land drafted and obtained such document, therefore, the breach of such an agreement does not lead the appellant to suffer any irreparable loss.

6) Taking into consideration the facts and circumstances of the instant case, the law laid down in Ashok Kumar Sable (supra) and Maharwal Khewaji Trust (supra), are distinguishable on facts. Evidently, balance of convenience and the principle of irreparable loss do not find favour of the appellant.

7) Considering all the facts and material on record, I am of the opinion that learned Court below did not commit any illegality or irregularity in disallowing the application of applicant by passing impugned order. The impugned order does not suffer from such infirmities, which may require any interference by this Court, therefore, the appeal is liable to be dismissed and is accordingly dismissed.

Parties to bear their own costs.

Sd/-
V.K. Shrivastava
Judge

padma